

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

DOUGLAS CHERRY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.)	CASE NO. 1:07-cv-923-MEF
)	
AIG SUNAMERICA LIFE ASSURANCE)	
COMPANY <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

This cause is before the Court on Defendant's Motion to Dismiss (Doc. #9) filed on October 19, 2007. One of defenses asserted in this motion is for failure to state a claim upon which relief can be granted, which is the defense permitted by Rule 12(b)(6) of the Federal Rules of Civil Procedure. Rule 12(b) further states that, with respect to a Motion to Dismiss grounded on Rule 12(b)(6), if

 matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Fed. R. Civ. P. 12(b). The Defendants submitted two exhibits in support of their Motion to Dismiss (Doc. # 9). This Court will not exclude these evidentiary submissions.

Accordingly, pursuant to Rule 12(b), it is hereby ORDERED as follows:

(1) Defendant's Motion to Dismiss shall be treated as a Motion for Summary Judgment.

(2) The plaintiffs shall file a response which shall include a brief and any evidentiary materials on or before November 7, 2007.

2. The defendant may file a reply brief on or before November 14, 2007.

DONE this 24th day of October, 2007.

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE